**HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1881 OF 2005**
with
**CIVIL APPLICATION NO. 4501 OF 2005**

Ashok Y. Badave & Ors. ..Appellants

Versus.

Sadashiv Abaji Pol & Ors. ..Respondents.

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Smt. S. S. Gokhale for the Applicants / Appellants

Shri. Dilip Bodake for the respondents.

**CORAM: DR.D.Y. CHANDRACHUD J.**

**DATE : DECEMBER 1, 2005.**

**P.C.**

1. This appeal is directed against an order of the Additional District Judge, Satara on an application under section 72 of the Bombay Public Trusts Act, 1950. In view of the well settled position, this court shall have to proceed on the basis that this is essentially a Second Appeal which can be entertained provided a substantial question of law arises.

2. The term of the Governing Council for the year 2001-04 has admittedly expired and elections are due. The Trust has a small membership. The judgment dated 27th April 2004 of the Assistant Charity Commissioner

sets out a list of 15 members. The Assistant Charity Commissioner directed that the names of those members who have expired be deleted. It is common ground that Shri. Bapurao Shivram Bhosale (appellant No.5), Shri. Ganpat Balwant Kadre (respondent No.5), and, Shri. Achyut Raoji Badave (respondent NO.10) have expired. The Inspector in the office of the Assistant Charity Commissioner has been appointed to conduct the elections in accordance with the provisions made in the constitution of the Trust. The order passed by the Joint Charity Commissioner on 22nd March 2005 notes that the copy of the Trust's constitution that has been placed on the record has a number of interpolations and erasures; that the main dispute is as regards the strength of the Governing Council; and unless this is determined, no purpose will be served by merely holding elections. The order of the Joint Charity Commissioner has not been interferred with by the Additional District Judge, Satara.

3. In the circumstances, it would be necessary for the Assistant Charity Commissioner to determine, expeditiously, on the basis of the Constitution of the Trust as maintained in the records available with the office of the Assistant Charity Commissioner as to what is the correct number of members to be elected to the Governing Council. The Assistant Charity Commissioner

shall in all events determine the aforesaid issue within a period of four weeks from today. Immediately upon the aforesaid determination being made the elections shall be conducted in accordance with the Constitution of the Trust by the Inspector nominated for the purpose thereof. Learned counsel appearing on behalf of the appellants and the respondents are agreed that they shall appear before the Assistant Charity Commissioner, Satara on 12.12.2005 so that necessary directions can be issued for facilitating the conduct of the elections having regard to what is stated herein above. The Appeal is accordingly disposed of since no other issue is pressed.

4. In view of the disposal of the First Appeal, Civil Application No. 4501 of 2005 does not survive, it is accordingly disposed of.

**(DR. D.Y. CHANDRACHUD J.)**